International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 197 (Northeastern State Boilermaker Employers) ***and*** **Wayne D. Vandervoort.** Case 3–CB–6642

July 31, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

On May 31, 1995, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent did not violate Section 8(b)(1)(A) by refusing the Charging Party's request for photocopies of referral records. We disagree.

The Respondent, in conjunction with its exclusive hiring hall, maintains an out-of-work list. With some exceptions, when it receives a request from a contractor for a referral, the Respondent refers the individual whose name is at the top of the out-of-work list.

In May 1994[1] Charging Party Vandervoort believed that the Respondent referred a number of individuals whose names were below Vandervoort's name on the out-of-work list. Vandervoort believed that this had happened on other occasions.

In June, Vandervoort filed a grievance regarding the Respondent's failure to refer him. During a discussion about the grievance with the Respondent's business manager, Clouse, Vandervoort asked for photocopies of the referral list and a record of all job dispatches for the previous 3 months. Clouse replied that Vandervoort could observe the documents and make notes, but he could not have photocopies.

The Respondent claimed that the refusal to provide photocopies was justified because the information, without explanation by a knowledgeable person, could be misunderstood by a member and because the documents contained confidential information. The judge found none of these arguments persuasive, particularly noting that the confidentiality claim made no sense because an individual had full access to the information and could copy by hand even the confidential information. Nevertheless, the judge dismissed the complaint because he found that Board precedent did not extend to requiring a union to allow copying under the circumstances of this case.

A union's duty of fair representation includes an obligation to provide access to job referral lists to allow an individual to determine whether his referral rights are being protected. *Operating Engineers Local 324*, 226 NLRB 587 (1976). Thus, a union violates Section 8(b)(1)(A)

> when it arbitrarily denies a member's request for job referral information, when that request is reasonably directed towards ascertaining whether the member has been fairly treated with respect to obtaining job referrals. [*NLRB v. Carpenters Local 608*, 811 F.2d 149, 152 (2d Cir. 1987), enfg. 279 NLRB 747 (1986).]

When a member seeks photocopies of hiring hall information because he reasonably believes he has been treated unfairly by the hiring hall, the union acts arbitrarily by denying the requested photocopies, unless the union can show the refusal is necessary to vindicate legitimate union interests. *Carpenters Local 608*, supra at 755–757. See also *Carpenters Local 35 (Construction Employers Assn.)*, 317 NLRB 18 (1995).[2]

The record shows that Vandervoort reasonably believed there had been a violation of the hiring hall's referral procedure and he requested photocopies of the referral records. We agree with the judge's finding that the Respondent's purported interests in denying the request are not persuasive. The record contains no evidence that the request was overbroad, that it would be burdensome to provide the information, or that Vandervoort's concern about hiring hall procedures was unreasonable. We therefore conclude that the Respondent violated the Act as alleged.

CONCLUSION OF LAW

By arbitrarily denying Wayne D. Vandervoort's request for photocopies of referral records, the Respondent has breached its duty of fair representation in violation of Section 8(b)(1)(A) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to honor the

[1] All subsequent dates are in 1994, unless otherwise indicated.

[2] The judge found that in some cases where the Board ordered the respondents to provide photocopies, the respondents had refused even to permit visual inspection. We believe that the right to photocopy is a corollary to the right of access to referral records. We therefore do not agree that the photocopy holdings in the cases the judge cited are remedies limited to the circumstances of those cases. See *Carpenters Local 102 (Millwright Employers Assn.)*, 317 NLRB 1099, 1106 at fn. 27 (1995).

Charging Party's request for photocopies of referral records.

ORDER

The National Labor Relations Board orders that the Respondent, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 197, Albany, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Arbitrarily denying requests for photocopies of referral records from employees who are registered for referral from its exclusive hiring hall and who reasonably believe they have been improperly denied referrals.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor Wayne D. Vandervoort's request for photocopies of referral records on payment of reasonable costs for those photocopies or, alternatively, allow him to photocopy those records.

(b) Post at its facility in Albany, New York, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT arbitrarily deny requests for photocopies of referral records from employees who are registered for referral from our exclusive hiring hall and who reasonably believe they have been improperly denied referrals.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL honor Wayne D. Vandervoort's request for photocopies of referral records on payment of reasonable costs for those photocopies or, alternatively, allow him to photocopy those records.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL 197 (NORTHEASTERN STATE BOILERMAKER EMPLOYERS)

Alfred M. Norek, Esq., for the General Counsel.
Bruce C. Bramley, Esq. (Pozefsky, Bramley & Murphy), for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on April 24, 1995, in Albany, New York. The complaint herein, which issued on October 24, 1994,[1] and was based on an unfair labor practice charge and an amended charge that were filed on August 31 and October 21 by Wayne D. Vandervoort, an individual, alleges that International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 197 (Respondent) violated Section 8(b)(1)(A) of the Act by arbitrarily and capriciously denying Vandervoort the right to make copies of the referral list and job dispatches over the prior 3 months that are used in its exclusive hiring hall.

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that the employer-members of Northeastern State Boilermaker Employers (the Association) have been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that at all times material herein it has been a labor organization within the meaning of Section 2(5) of the Act.

III. FACTS AND ANALYSIS

The issue herein called be simply stated; when a union operates an exclusive hiring hall (as Respondent does here) and allows individuals to freely examine its hiring hall and referral records at its office (as Respondent does here), must the Union also provide these individuals, on request, with photocopies of the referral records (as the Respondent does not do here)?

[1] Unless indicated otherwise, all dates referred to here relate to the year 1994.

A. *The Operation of the Hiring Hall*

There is no dispute as to the facts here. Respondent has about 250 members, half of whom are involved in field construction. Respondent's geographic jurisdiction is solely within the State of New York, running north to Ticonderoga, west to Johnson City and Utica, south to Saugerties, and east along the Massachusetts, Vermont, and New Hampshire state lines.[2]

Admittedly, through its collective-bargaining agreement with the Association, Respondent operates an exclusive hiring hall in Albany, New York (the office), which is open Monday through Friday from 7:30 a.m. to 5 p.m. and is staffed by James Clouse and/or Jerry Gendron, Respondent's business manager and assistant business manager. It is at that office that members and nonmembers go to apply for jobs through the hiring hall. There are two different forms used regularly at the office. Upon completion of a job, individuals come to the office and sign a work referral sheet, which is dated and the individual is given a copy of this form. The individual's name is then placed on the bottom of Respondent's out-of-work list, which is the list that is employed in referring individuals to jobs. On the employer side of the picture the form employed is a requisition form on which employers list their manpower needs. The information listed on this form includes the employer's name, the date and time of the request, and the location of and qualifications for the job. When a match is made between the out-of-work list and the requisition form, the name of the employee (or employees) referred is placed on the requisition form.

Obviously, the usual procedure is for the individual at the top of the out-of-work list to be the first sent out. There are a number of situations, however, where the employers or the respondent can select individuals out of order. Two examples of this are that an employer can select an individual, by name, to serve as foreman on a job, and the respondent can select an individual, by name, to serve as steward on the job. Additionally, the respondent has more latitude in referring employees to emergency jobs. Finally, referred individual's names are not removed from the list until they have worked for 80 hours on the referred-to job. For example, if an individual had been at the top of the list, was referred to a job, and worked for 60 hours when he was laid off, he returns to the top of the list.

The evidence establishes that individuals who come to the office are allowed to review the lists and to make whatever notes they wish; however, they cannot photocopy, or obtain photocopies, of these lists. As Clouse testified: ''They can make notes, copy it, ask all the questions about it, but no photocopies.'' He testified that individuals have come to the office, asked for and been given the out-of-work list and the requisition forms, sat down and written out all the information on these forms, and he has never denied anybody their right to do that, but he does not let them take them out of the office or photocopy them. Clouse testified to a number of reasons why the Respondent does not allow individuals to photocopy the out-of-work list. Firstly, because of the exceptions to the first-in first-out procedure as discussed above, an individual would not get a perfectly true picture of his position. Additionally, the applicant may still see an individual's name on the list even though he knows that individual was already sent out, but not realize that the name is not taken from the list until he has been employed for 80 hours at that job, as also discussed above. Another reason for this restriction as testified to by Clouse was that these documents contain ''a lot of personal information,'' such as social security numbers and unlisted telephone numbers, and individuals should not be allowed to photocopy documents containing this personal information.

[2] I take official notice that the maximum distance covered is about 120 miles.

B. *The Events Herein*

Vandervoort testified, and Respondent's out-of-work list establish, that by August or September he was number one or two on the list and remained there for about 3 months without being sent out by Respondent. Vandervoort believed that, over the prior few months, individuals below him had been improperly referred to work ahead of him. Between January 1 and August 31 Vandervoort, who lives about 11 miles from the office, visited the office on about 20 occasions. On about June 6, he asked Clouse for a photocopy of the referral lists and Clouse told him that he could look at the lists, make notes, but he could not make photocopies of the lists. In August, pursuant to a grievance that Vandervoort filed alleging that he had been denied referrals, Respondent again denied his request for photocopies of these referral records. As to why he feels that he needs photocopies, Vandervoort testified that he believes that the Respondent is improperly referring individuals and, although he can handcopy Respondent's referral records, ''I'd rather have it in their handwriting, so there would be no question later on in the grievance procedure.''

C. *Analysis*

The sole issue here is whether Respondent violated Section 8(b)(1)(A) of the Act by refusing to give Vandervoort photocopies of its referral records. There is no evidence that Respondent was discriminating against him or was concealing any of its record; Respondent wanted to show him the records while he wanted copies of the records. Vandervoort testified that he needed photocopies because, if he used this information at a grievance about the operation of the referral system, photocopies would be more useful for him than handwritten documents. Clouse testified that these records contained confidential information such as social security numbers and unlisted telephone numbers, and he did not like such information being photocopied. Neither of these positions is very persuasive, certainly not Clouse's. The obvious question is, what difference does it make whether the documents were photocopied? The individuals at the office are given full access to the referral records and could write down this allegedly personal material.

General Counsel relies on three cases herein: *Iron Workers Local 27 (Morrison-Knudson)*, 313 NLRB 215 (1993); *Operating Engineers Local 513 (Various Employers)*, 308 NLRB 1300 (1992); and *Service Employees Local 9 (Blumenfeld Enterprises)*, 290 NLRB 1 (1988). I find that *Operating Engineers Local 513* and *Service Employees Local 9* are clearly distinguishable. They both involve a union's total failure to provide individuals with access to the hiring hall records. In *Service Employees Local 9*, the administrative law judge found that the union violated Section 8(b)(1)(A) of the Act

by arbitrarily denying the individual's request for its dispatch records, and ordered the union to provide him with copies of these records. This is far from a definitive pronouncement that individuals are always entitled to photocopies of unions' referral records. Rather, considering the background, it was an appropriate remedy in that matter. In *Operating Engineers Local 513*, the Union also totally rejected the individual's request for relevant hiring hall records; Administrative Law Judge Bernard Reis stated: ''An applicant ought to be entitled, as a matter of right, *to inspect* hiring hall records to determine whether his employment opportunities have been, advertently or otherwise, interfered with.'' (Emphasis added.) The union was ordered, in that case, to ''make available'' the information, something substantially less than General Counsel is requesting here.

Finally, in *Iron Workers*, supra, principally relied on by General Counsel, the union's members customarily came to the union hall to review the union's referral records. The charging party in that case wrote to the union asking that they provide him with a copy of their out-of-work list, which request the union denied. The administrative law judge and the Board found that by denying his request for the information, the union violated Section 8(b)(1)(A) of the Act. After making that finding, Administrative Law Judge Gordon Myatt stated (id. at 218):

> Having determined that the Union had a duty to provide Snyder with the out-of-work list information, there remains a question of whether the Union is required to copy the information and supply it to Snyder, or simply permit him to inspect and copy the information . . . at the Union's hiring hall in Salt Lake City. Although the undisputed testimony establishes that members and referral applicants customarily inspected the referral index cards at the hiring hall to determine their positions on the list, I am of the view that the circumstances of this case require the Union to copy and furnish the referral information to Snyder.
>
> As noted, the Union's territorial jurisdiction covers the State of Utah and parts of the States of Nevada and Wyoming. Hence, its membership and referral applicant pool is widely scattered; as evidenced by the fact that Snyder lives approximately 150 miles from the hiring hall. Weighing these factors against the inconvenience and cost to the Union, I find it reasonable to require the Union to provide the requested referral information to Snyder.

The facts in the instant matter are clearly distinguishable from those present in *Iron Workers*. Vandervoort lives about 11 miles from the union office and went there on about 20 occasions between January and August. The Board and judge in *Iron Workers* did not establish a rule that in hiring hall cases individuals are always entitled to photocopies of the union's hiring hall records. Rather, the judge and the Board found that in the circumstances of that case, principally where the individual lived 150 miles from the union office, it would be less of an inconvenience for the union to provide him with a photocopy of these records than it would be for him to have to travel to the union's office to inspect the records. I find that in the instant matter the Respondent did all that it was legally required to do. Its records were available for inspection at its office, without limit except for copying, and Vandervoort freely took advantage of that process, apparently, without any inconvenience. I therefor recommend that the complaint be dismissed in its entirety.

CONCLUSIONS OF LAW

1. The employer-members of the Association have been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not violate Section 8(b)(1)(A) of the Act as alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]